

# Revisiting the Customs Act 1969 in line with WCO's International Convention on the Simplification and Harmonization of Customs Procedures 1974

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**ABSTRACT:** In the present-day system of integrated world economy, the administration of customs or customs procedure clearly carries considerable effects on the trade transactions both within the border and beyond. In fact, the gravity of the cross-border business potentials leads to the realization of simplifying and harmonizing the customs procedures all over the world. Moreover, the development and operation of the modern customs administration signifies, by and large, a radical shift from the revenue collection to the trade facilitation focus. In the current day, it has become almost a universal belief that trade facilitation and removal of trade barriers go hand in hand with simplification and harmonization of customs procedures. The World Customs Organization (WCO) with this in mind had the Revised Kyoto Convention (RKC) enacted in 1974. The customs regime of Bangladesh is still dependant on the half century old the Customs Act, 1969. Although some changes have been brought to bring it in line with the RKC, many of its provisions are still the same. This creates an impediment towards trade facilitation and economic growth. This paper discusses the differences between the provisions of RKC and Customs Act, 1969 and recommends the changes

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that are required to be brought in the customs regime of Bangladesh for overall trade facilitation and economic development of the country.

**KEYWORDS:** Revised Kyoto Convention, SAFE Framework, Customs Act, 1969, customs administration.



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## I. INTRODUCTION

The administration of customs or customs procedure plays a pivotal role in today's integrated world economy for trade dealings both within the border and beyond. In effect, the magnitude of the cross-border business possibilities brings afront the necessity of simplifying and harmonizing the customs procedures all over the world. Further, the expansion and operation of the modern customs administration signifies, by and large, a drastic move from the revenue collection to the trade facilitation focus. Currently, it has thus become a generally accepted view that the simplification or modernization of customs procedures and the potentials of trade facilitation are supposed to go hand in hand.<sup>1</sup>

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<sup>1</sup> Indeed, the present-day approach of defining trade facilitation with reference to the simplification and harmonization of customs or custom procedures reflects the truth of this fact. Trade facilitation is defined as: 'The simplification and harmonisation of international trade procedures' where trade procedures are the 'activities, practices and formalities involved in collecting, presenting, communicating and processing data required for the movement of goods in international trade.' (WTO 1998 quoted in A Grainger, 'Customs and trade facilitation: from concepts to implementation', (2008) 2:1 World Customs Journal 17).

The growing relevance of the upgrading of customs procedures can be found in many countries' tendency to initiate unilateral reforms of customs administrations and procedures, the main objective being to simplify procedure and facilitate trade. Given this fact, the World Customs Organization (WCO) has undertaken a number of important initiatives in order to simplify and harmonize the customs procedure. Towards this end, it has formulated a general guidance on the standards and best practice relating to the customs regulations. The major source of such guidance is the WCO's International Convention on the Simplification and Harmonization of Customs Procedures<sup>2</sup> which entered into force in 1974, currently known as the Revised Kyoto Convention<sup>3</sup> (RKC) that entered into force on February 3, 2006. Apart from this, the related WCO instruments, such as the WCO SAFE Framework of Standards to Secure and Facilitate Global Trade 2005<sup>4</sup> (Safe Framework), and the World Trade Organization Customs Agreements including the Trade Facilitation Agreement 2013 (TFA)<sup>5</sup>, and the European Community

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<sup>2</sup> International convention on the Simplification and Harmonisation of Customs Procedures 1973 (adopted on 19 May 1973 and entered into force on 25 September 1974) <[http://publications.europa.eu/resource/cellar/9d2f892d-acea-47d6-a7ab-](http://publications.europa.eu/resource/cellar/9d2f892d-acea-47d6-a7ab-c07b3ef3f321.0002.03/DOC_3#:~:text=The%20WCO%20Kyoto%20Convention%20was,of%20Customs%20Procedures%20in%201974)

[c07b3ef3f321.0002.03/DOC\\_3#:~:text=The%20WCO%20Kyoto%20Convention%20was,of%20Customs%20Procedures%20in%201974](http://publications.europa.eu/resource/cellar/9d2f892d-acea-47d6-a7ab-c07b3ef3f321.0002.03/DOC_3#:~:text=The%20WCO%20Kyoto%20Convention%20was,of%20Customs%20Procedures%20in%201974)> accessed 13 April 2023.

<sup>3</sup> Revised Kyoto Convention (adopted on 26 June 1999 and entered into force on 3 February 2006)

<[http://www.wcoomd.org/Topics/Facilitation/Instrument%20and%20Tools/Conventions/pf\\_revised\\_kyoto\\_conv/Kyoto\\_New](http://www.wcoomd.org/Topics/Facilitation/Instrument%20and%20Tools/Conventions/pf_revised_kyoto_conv/Kyoto_New)> accessed 13 April 2023.

<sup>4</sup> In June 2005 the WCO Council adopted the SAFE Framework of Standards to Secure and Facilitate Global Trade (SAFE Framework) that would act as a deterrent to international terrorism, to secure revenue collections and to promote trade facilitation worldwide.

<sup>5</sup> Trade Facilitation Agreement 2013

<[https://www.wto.org/english/tratop\\_e/tradfa\\_e/tradfa\\_e.htm#:~:text=WTO%20members%20concluded%20negotiations%20at,thirds%20of%20the%20WTO%20membership](https://www.wto.org/english/tratop_e/tradfa_e/tradfa_e.htm#:~:text=WTO%20members%20concluded%20negotiations%20at,thirds%20of%20the%20WTO%20membership)> accessed 13 April 2023.

Customs Code 2008 (Modernized Custom Code)<sup>6</sup> can also be found as the workable source of standardizing the custom procedure.

The Revised Kyoto Convention is founded upon the rationale of harmonizing the customs administration without compromising the appropriate standards of customs control over the movement of goods. In general, this Convention seems to offer a feasible means of striking a balance between the seemingly conflicting objectives: between the quick facilitation of customs clearance and the enforcement of control measures to protect public health, economy, and community security. Seen as such, all the parties to this Convention are placed in the challenge of modernizing the customs administration and procedure in line with the promise of striking this balance. Like many other countries of the world, Bangladesh is currently in the face of similar challenge.

In Bangladesh, the existing regulatory regime of customs administration was established under the Customs Act of 1969<sup>7</sup>, clearly before the emergence of the Revised Kyoto Convention. At present, the continuance of the existing regime under the Act of 1969 thus seems to put the country's custom administration initially at the loggerhead with the international standards of customs regulations. In addition, the various amendments to this Act that have been made in the past without fully harmonizing or reconciling the changes with the existing text have created further confusions and complexities in the operation of the customs administration. More importantly, the manual operation-oriented time-consuming formalities in the release of goods from customs

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<sup>6</sup> European Community Customs Code 2008 <<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex:32008R0450>> accessed 13 April 2023.

<sup>7</sup> Customs Act 1969 (Act No. IV of 1969) <<http://bdlaws.minlaw.gov.bd/act-details-354.html>> accessed 13 April 2023.

in Bangladesh have made the problem more acute. However, in countries like India the process is rather easy and done digitally.<sup>8</sup>

Against this backdrop, it has thus become indispensable to reconstruct the regulatory regime of the customs administration in Bangladesh. As a matter of fact, the accomplishment of this purpose will require an assessment of the operational aspects of the Customs Act of 1969 with reference to its impact on the trade potentials for Bangladesh in general, and its compliance with the standards of international custom procedures in particular. The present article is intended to revisit the Customs Act from the trade facilitation perspective. The present article is intended to revisit the Customs Act from the trade facilitation perspective. Further, post 9/11 regime requires highly sophisticated customs procedure of cross-border trade transaction to deal with anti-terrorist protectionism. Thus, this article aims at way outs for reconstructing Bangladeshi customs regulation in a simplified and modernized version keeping in mind all the above-mentioned concerns. To achieve the article's objective, the researchers have generally followed the comparative research methodology and the library-based research method in collecting the data. The research has extensively used the secondary materials including books, journals, periodicals and reports, and primary materials like the international treaties and the domestic legislation. In the first part, the research has described background, formulated the research question, put forward the research objective and talked about the methodology. Then in the second and third parts, the research has explained the salient features of the RKC 1999 and the Customs Act 1969 with reference to the trade facilitation. In the fourth and fifth parts, the research has drawn on the points of compatibilities between the RKC 1999 and the Customs Act

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<sup>8</sup> To know briefly about the Indian clearance process, see <<https://www.indiafilings.com/learn/customs-clearance-procedure-india/>> accessed 13 April 2023.

1969 and the recommendations to mitigate the deficiencies. Then the research has made the conclusion responding to the research question.

## II. REVISED KYOTO CONVENTION

The Revised Kyoto Convention has emerged with the realization of simplifying and harmonizing the custom procedures.<sup>9</sup> In particular, this Convention is built upon some major objectives it intends to eliminate the divergence between the customs procedures and practice that can hinder international trade and other international exchange; to contribute effectively to the development of such trade and exchange by simplifying customs procedure and by fostering international co-operation; and to ensure the benefits of facilitation of international trade without compromising the appropriate standards of customs control.<sup>10</sup>

The Revised Kyoto Convention and other international instrument, such as the SAFE Framework provide for the standard of simplifying and modernizing the customs procedure.<sup>11</sup> For example, the risk-based verification of goods in customs has been recognized as a significant avenue to facilitate the trade under the Revised Kyoto Convention. Chapter 6 of the Revised Kyoto Convention requires the replacement of random examination of goods and documents with the risk-managed style of regulatory compliance. Similarly, the SAFE Framework speaks for the Customs-to-Customs network to exchange timely and accurate information the establishment of which would help the customs

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<sup>9</sup> 'Revised Kyoto Convention: Trade Facilitation Implementation Guide' <<https://tfig.unece.org/contents/revised-kyoto-convention.htm>> accessed 13 April 2023.

<sup>10</sup> Joakim Svensson, 'Estimating the WCO Revised Kyoto Convention's Impact on International Trade' (Undergraduate thesis, Lund University 2012) <<https://lup.lub.lu.se/luur/download?func=downloadFile&recordId=2607321&fileId=2607322>> accessed 13 April 2023.

<sup>11</sup> Tadashi Yasui, *Benefits of The Revised Kyoto Convention* (World Customs Organization 2010) <<https://docplayer.net/21570116-Benefits-of-the-revised-kyoto-convention.html>> accessed 13 April 2023.

department to manage risk more effectively by improving its ability to detect high-risk shipment in the supply chain.<sup>12</sup>

### III. THE CUSTOMS ACT, 1969

Chapters IX, X and XI of the Customs Act 1969 contain provisions regarding clearance of goods for home consumption, warehousing, coastwise trade, and inward containing. The provisions are extensive and detailed. However, the Act contains no definitions of transit or transshipment of goods. Chapters XII and XIII of the Act also contain no detailed provisions on placement of goods in transit or for transshipment. Sections 120 and 126 only provide baggage carriers as alternative to import clearance. It should also be noted that the Act contains no definition of declarant as well. Further, section 83C gives customs authorities the power to audit goods at any time brought in for home consumption and section 83D gives it the power to appoint any third-party auditing firm or auditor. In addition, section 4 empowers customs officials with powers enumerated in the Act. However, the proviso allows the National Board of Revenue (NBR) by general or special order, to limit such powers or place conditions as may be necessary. In line, section 19 provides a general power for exemption of customs duties. In addition, under section 20, the Government in public interest can also exempt custom duties.

To resolve disputes amicably, Chapter XVIIIA contains provisions for alternative dispute resolution (ADR). In line, section 192C (1) (a) and (b)

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<sup>12</sup> Robert Ireland, 'The WCO SAFE Framework of Standards: Avoiding Excess in Global Supply Chain Security Policy' (2009) 4 Global Trade and Customs Journal <[http://www.wcoomd.org/~media/wco/public/global/pdf/topics/research/research-paper-series/safe\\_framework3.pdf?la=en](http://www.wcoomd.org/~media/wco/public/global/pdf/topics/research/research-paper-series/safe_framework3.pdf?la=en)> accessed 13 April 2023.

provides the scope for the application of ADR in customs proceedings. However, section 192K puts a bar to any future proceeding if an agreement is reached through ADR under the Chapter. This means ADR is binding on the parties.

To punish for wrongdoings, section 156 lists the punishment for offences. The penalties are same for both first time as well as repeat offenders. Chapter XVIII enumerates the power of search, seizure, and arrest for customs officials. To do the departmental jobs, section 158A confers certain powers of a First-Class Magistrate upon a customs officer.

Under Chapter XIX, the provisions regarding appeals and revisions have been provided. Under section 193, orders passed under the Act except under sections 82 or 98, must be appealed to the Commissioner (Appeals). If the party is aggrieved by order of the Commissioner (Appeals) then they may file a further appeal to the Appellate Tribunal constituted under section 196. Appeals from decisions of Review Committee under section 193 will also go to the Appellate Tribunal. From orders of the Appellate Tribunal under section 196B, within 90 days, an aggrieved party can file an appeal to the High Court Division under section 196D. However, section 196M bars the jurisdiction of civil courts before the aggrieved person applies to the Commissioner (Appeals) or Appellate Tribunal, as the case may be.

In addition, sections 193B and 195 of the Act give the National Board of Revenue the power to call for any records within a year to either rectify or correct mistakes or call for and examine records. Although the section states fine cannot be increased without giving another party due notice, this is a very discriminatory discretionary power. Similar power has also been given to the Government under section 196L.



#### IV. POINTS OF DIFFERENCES BETWEEN THE CUSTOMS ACT AND THE RKC

After comparing the existing provisions of the Customs Act with these standards of the RKC or the SAFE Framework<sup>13</sup>, it is found that there exists serious gaps between the Customs Act and the Revised Kyoto Convention in respect of simplification of the entry and clearance procedure.<sup>14</sup> Although the Act contains extensive provisions on clearance of goods for home consumption, warehousing, export and coastwise trade, it provides more limited provisions on transit and transshipment, and provisions authorizing the duty-free entry to goods that are temporarily imported or returned from abroad. It appears that the Act animates confusion and lacks clarity regarding the placement of goods under the transit and transshipment procedure, as well as the particular clearance procedure applicable to other allowed movement of imported goods. Moreover, the Act does not provide any import clearance alternative, excepting the case of baggage carries by passengers, crews, and postal imports. More importantly, the legal concept of the 'declarant' is yet to be stated clearly in this Act.<sup>15</sup> By this time, the Act, however, makes some improvement to the existing regimes: the risk-based clearance system has been introduced in a limited scale by amending the Act in 2001.<sup>16</sup>

The Act incorporates many of the international standards, best practices, and recommendation. Among other measures, it provides strong provisions on customs audit, comprehensive powers of the customs

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<sup>13</sup> (n 4).

<sup>14</sup> Md Almas Uzzaman and Mohammad Abu Yusuf, 'The Role of Customs and Other Agencies in Trade Facilitation in Bangladesh: Hindrances and Ways Forward' (2011) 5 World Customs Journal 29.

<sup>15</sup> Marwa Abdou and others, *Borders Without Barriers: Facilitating Trade in SASEC Countries* (ADB 2019).

<sup>16</sup> Md Almas Uzzaman and Mohammad Abu Yusuf, 'The Role of Customs and Other Agencies in Trade Facilitation in Bangladesh: Hindrances and Ways Forward' (2011) 5 World Customs Journal 29.

officers, and it contains a good administrative appeal procedure including provisions of alternative dispute resolution. Nevertheless, many provisions of the Customs Act are not in compliance with the Revised Kyoto Convention. As such, there still exists serious gaps between the customs procedure as prescribed under the Act and the standards as required by the RKC. Of a number of problems in the customs procedure in Bangladesh, some can be summed up as follows:

- There are procedural complexities and disputes arising out of those complexities over classification, valuation and overall clearance procedure as contained in the Act that stand at depressing phenomena in the case of trade facilitation in Bangladesh.<sup>17</sup> In the case of valuation, the presumption of under-invoicing and arbitrary determination of values sometimes creates serious discontent among the persons interested in valuation. By contrast, the importers' tendency to submit false invoices to customs increases the severity of the challenges.
- There is a problem of lengthy delays and cost escalation in custom clearance due to the excessive documentation, physical inspection, and multiple inspections in the presence of more than one agency.<sup>18</sup>
- The customs procedures in Bangladesh suffer from manual operations, arbitrary decisions and corruptions in clearance.<sup>19</sup> Layers in decision-making and such manual system contribute to the delay in the customs clearance by hindering the legitimate flow of goods, and increase the costs.
- There is a lack of adequate testing facilities that makes the clearance procedure time consuming.<sup>20</sup> The requirement of

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<sup>17</sup> *ibid.*

<sup>18</sup> *ibid*

<sup>19</sup> *ibid*

<sup>20</sup> *ibid*

approvals by multiple officials on the same customs declaration also contributes to unnecessary hassles.

- Due to the overall inconsistencies in the administration, the function of the Pre-Shipment Inspection (PSI) system has gradually become ineffective and corrupt.<sup>21</sup> The PSI agencies are now accused of being devious with the unscrupulous importers to help evade tax. As a result, the Government is being deprived of a huge amount of revenues from the imported goods. Moreover, the dispute between the Customs and PSI agencies with regard to the classification and valuation of goods shown in the Cost and freight (CRF) certificate results in inordinate delays in the clearance of goods.<sup>22</sup>

The implications of such gaps have been reflected in the overall customs administration in Bangladesh.<sup>23</sup> At present, the customs administration is suffering from the excessive control and insufficiencies in the customs procedure, combined with a monopoly of service providers at key entry points. Further, the problems summed up above mainly relate to the simplification of customs procedure, and some initiatives have taken over times to reduce the impact of these complications. In recent times, significant progress has been made in respect of computerization of customs procedure. The incorporation of the latest version of

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<sup>21</sup> *ibid*

<sup>22</sup> M Haque, 'Four PSI companies are looting 350 crores: Finance Minister's declaration becomes ineffective: huge loss in revenue', *The Daily Janakantha* (Dhaka, 11 February 2021 <[www.dailyjanakantha.com/news\\_view.php?nc](http://www.dailyjanakantha.com/news_view.php?nc)> accessed 16 September 2021.

<sup>23</sup> "Report and Recommendation of the President to the Board of Directors on a Proposed Loan and Technical Assistance Grant to the People's Republic of Bangladesh for the Chittagong Port Trade Facilitation Project" (Asian Development Bank 2004) <<https://www.adb.org/projects/documents/chittagong-port-trade-facilitation-project-rrp>> accessed 16 September 2021.

ASYCUDA<sup>24</sup> (ASYCUDA World System)<sup>25</sup>, the rationalization and simplification of the tariff structure, automation of the Chittagong Customs House (CCH) and the installation of four containers' scanners in the Chittagong Port are the notable features of this progression.<sup>26</sup> Apart from this, an amendment was made in 2001 to the Customs Act (including substantial changes in sections 2(bb) (kk) (qqq), 3, 12, 18, 18A, 26, 80, 83, 131, 193C, 211, 215A and words changing in some other places) in order to harmonize customs procedures in line with the Revised Kyoto Convention.<sup>27</sup>

By way of introducing risk-based system of clearance<sup>28</sup>, customs clearance of passenger baggage in airports has been simplified, and as such more than 95 per cent of passengers and a good portion of imported goods are now released through the green channel without any physical verification and with minimum documentation checks.<sup>29</sup> There are some other important positive developments in this regard. The reduction of signature required in customs has been a significant step, resulting in the

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<sup>24</sup> ASYCUDA is a computerized Customs management system that covers most foreign trade procedures. It handles manifests and Customs declarations, accounting procedures, transit and suspense procedures. It also generates trade data that can be used for statistical economic analysis. The ASYCUDA software is developed in Geneva by UNCTAD.

<sup>25</sup> 'Chittagong Customs to Introduce ASYCUDA World System on July 1' *The Dhaka Tribune* (Dhaka, 19 June 2013 <[http://Chittagong Customs to introduce ASYCUDA world system on July 1. Dhaka Tribune](http://Chittagong%20Customs%20to%20introduce%20ASYCUDA%20world%20system%20on%20July%201.%20Dhaka%20Tribune)> accessed 16 April 2023.

<sup>26</sup> Asian Development Bank (n 23).

<sup>27</sup> Syed S. Hossain, 'Bangladesh Customs: Managing Risk for Better Trade' (2009) 4 *Global Trade and Customs Journal* 45.

<sup>28</sup> To know more about "risk management" see standard 6.3 of RKC and WCO Customs Risk Management Compendium available at <<https://tfig.unece.org/contents/customs-risk-management.htm>> accessed 14 April 2023.

<sup>29</sup> Dushni Weerakoon, Jayanthi Thennakoon and Bilesha Weerakoon, 'Multilateral Agreement on Trade Facilitation Important but Complex Agenda for South Asia' (CUTS International 2005) 249-96 <<http://www.cuts-international.org/SAFIT/chp5-TradeFacilitation.pdf>> accessed 16 April 2023.

reduction of time of the customs clearance.<sup>30</sup> In respect of sanctions of customs violation, it appears that the Customs Act has more or less been successful in imposing the penalties in compliance with the General Agreement on Tariffs and Trade (GATT)<sup>31</sup> Article VIII that requires member countries not to impose penalties on traders that are out of proportion to the degree of the violation of customs/import regulation.<sup>32</sup>

So, there have been improvements as abovementioned. But the situation is yet not totally compliant with international standard. Despite such simplification of customs procedures in recent times, the customs administration in Bangladesh is still less than efficient and effective for times spent and administrative glitches.<sup>33</sup>

## V. RECOMMENDATIONS

In light of the findings abovementioned, some major recommendation can thus be made in connection with the simplification or modernization of the entry and clearance procedure contained in the Custom Act. This includes the recommendations of re-defying the custom procedures consistent with the Revised Kyoto Convention, incorporating the legal

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<sup>30</sup> Debapriya Bhattacharya and Syed Saifuddin Hossain, 'Asia-Pacific Research and Training Network on Trade Working Paper Series, No. 9, April 2006 (Rev. 8/06) An Evaluation of the Need and Cost of Selected Trade Facilitation Measures in Bangladesh: Implications for the WTO Negotiations on Trade Facilitation' (2006) <<https://www.unescap.org/sites/default/files/AWP%20No.%209.pdf>> accessed 16 April 2023.

<sup>31</sup> General Agreement on Tariffs and Trade (GATT), signed on 30 October 1947 <[https://www.wto.org/english/docs\\_e/legal\\_e/gatt47\\_01\\_e.htm](https://www.wto.org/english/docs_e/legal_e/gatt47_01_e.htm)> accessed 16 April 2023.

<sup>32</sup> (n 16).

<sup>33</sup> 'ASIAN DEVELOPMENT BANK Regulatory Impact Analysis Report on the Current Customs Regulatory Framework in Bangladesh' (Asian Development Bank 2014).

concept of 'declarant' in the Act, establishing full-fledged style of risk-based regulatory compliance etc.<sup>34</sup>

In the Customs Act Chapter XVII mandates for the penalties including monetary penalty on various rates, confiscation, imprisonment (including rigorous) whereas specific annex H of RKC left the option of determining offences and penalties to the concerned countries primarily. Nonetheless it provided some standards in respect of investigation, seizure, detention of goods, detentions of persons and administrative settlements. In relation to the sanctions of customs violations, a good customs law would emphasize on the mix of enforcement strategies or regulatory responses— persuasion and education, mild administrative sanctions, confiscation of goods and criminal fines.<sup>35</sup> It should provide for the application of such sanctions in an escalating manner that is to increase the degree of sanction with repetition of the offence/occurrence. More importantly, it should provide the customs with the flexibility to fix penalty amount or compromise claims on the terms that are appropriate with the actual circumstances of the violation. In facilitating the smooth release of goods, an effective customs law would provide a system of "graduated regulatory or traffic-ticket" type fines instead of relying on the threat of a 'big stick' penalty alone. In this respect, the GATT Article VIII can be mentioned as the example which requires the Members not to impose penalties on traders that are out of proportion to the degree of the violation of customs/import regulations.<sup>36</sup>

Indeed, the incorporation of these standards is indispensable to make the sanctions of customs violations, what EU Modernized Custom Code

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<sup>34</sup> (n 16).

<sup>35</sup> European Commission, 'Commission Staff Working Document Impact Assessment: Accompanying the document Proposal for a Directive of the European Parliament and of the Council on the Union legal framework for customs infringements and sanctions' <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=SWD:2013:0514:FIN>> accesses 15 April 2023.

<sup>36</sup> (n 16).

describes as, “effective, dissuasive and proportionate”.<sup>37</sup> Compared to the contents of these standards, the provisions of the Customs Act were, however, found to provide a less effective scheme of sanctioning the customs violations. It appears that the civil penalty scheme as prescribed by the Act does not allow the release of goods subject to penalty claims and does not provide penalty exemptions in case of voluntary prior disclosure of violations. Moreover, the Act does not provide for the imposition of fines in an escalating manner. Thus, under this Act, a person who repeats the same offence 5 or 10 times or who deliberately commits the offence will be subject to the same civil penalty amount as a person who commits the offence once and by accident. Given this fact, there requires necessary amendments in the scheme of civil penalty abovementioned in order to make it more ‘effective, dissuasive and proportionate’.

By contrast, the comparison between the provisions of the Customs Act and the standards of international instruments in connection with the customs decision and appeal was found to create less discontent. The Act provides for an administrative decision and appeal procedure that is generally in accordance with the standards and best practices as set out in the international instruments such as the Revised Kyoto Conventions and the SAFE Framework. It thus allows an appeal against “any decision or order” passed under the Act; it sets out a reasonable time<sup>38</sup> frame for submission of the appeal. More importantly, it also appears to allow a number of alternative or additional routes of review or appeal like rectification of mistakes and some other.

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<sup>37</sup> European Commission (n 35).

<sup>38</sup> Section 193, 196A fixes the time for appeal to commissioner and to the appellate tribunal which is 3 months whereas for HCD it is fixed at 90 days as mandated in 196D.

However, the Act fosters a serious flaw in respect of granting discretionary route of review or appeal. It authorizes the NBR or the Government to intervene in the individual cases in exercising the discretionary route. It appears that such authorization may potentially allow importers and exporters to avoid the administrative appeal review, and thereby to frustrate the ability of the Customs Administration to oversee the uniform application of its policy and interpretations. Thus, this article offered a recommendation to eliminate this part of discontent. It has been suggested that to support the integrity of the administrative review procedure, and to allow importers and exporters to rely on Customs decision, it would be preferable if the Government and the NBR acted through issuance of general policy or directives instead of intervening in the individual cases.

Generally, it finds its place in the realization that the simplification and harmonization of customs procedure is indispensable for facilitating trade in this era of globalised world economy.<sup>39</sup> In particular, it proceeded with the conviction that the simplification and modernization of customs procedure in compliance with the standards of the Revised Kyoto Convention as mentioned earlier will bring supposedly positive impacts on the trade potentials of Bangladesh.<sup>40</sup> This conviction has further been flourished with the argument that the continuance of the relatively older regime of customs administration in Bangladesh stands as a roadblock in the way of trade facilitation. The major promise of this article is thus built upon the task of reconstructing the regulatory regime of the Customs Administration in Bangladesh.

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<sup>39</sup> Syed S. Hossain and Md. Tariqur Rahman, 'Facilitating Trade Through Simplification of Trade Processes and Procedures in Bangladesh' (ARTNeT Working Paper Series No. 93, 2011) <<https://unnex.unescap.org/sites/default/files/wp9311.pdf>> accessed 15 April 2023.

<sup>40</sup> 'Bangladesh Customs Capacity Building: Need, Strategy and Action Plan' (National Board of Revenue, Bangladesh 2021).



In what follows, some suggestions are put forward in the way of substantive recommendations:

- The definitions of the customs procedure should be reflective of the treatment that is aimed to be achieved by such procedure. In order to do so, the Act's definitions of certain procedures such as transit, transshipment and temporary admission etc. should be clarified and aligned to the definitions of the Revised Kyoto Convention.
- The Customs Act should introduce the risk-based clearance as a full-fledged style of regulatory compliance. It should require advance submission of manifest data, and the legal basis for the electronic exchange of such data.<sup>41</sup>
- The Act should contain a framework of border coordination agency through detailed provisions on sharing and protection of information, by designating the Customs authority for taking the lead role.<sup>42</sup> In ensuring the coordination and co-operation, amendment should also be made in the allied laws that directly or by implications affect the customs administration.<sup>43</sup> Allied laws here imply the laws regulating border control, export-import and immigration.
- The civil penalty scheme of the Act should be revised so that it can accommodate the standards of the release of goods subject to penalty and provide for penalty to be applied in the escalating

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<sup>41</sup> (n 16).

<sup>42</sup> Stephen Holloway, 'Measuring the Effectiveness of Border Management: Designing KPIS For Outcomes' (2010) 4 World Customs Journal, 37.

<sup>43</sup> Jean F. Arvis and others, 'Connecting to Compete 2010: Trade Logistics in The Global Economy--The Logistics Performance Index and Its Indicators' (The International Bank for Reconstruction and Development/The World Bank 2010).

manner, being proportionate to the enormity of customs violations.

- The Act should incorporate within its framework the appropriate provisions for facilitating the cross-border enforcement of the intellectual property rights like copyright, trademark, patent and others in the point of the entry of goods. Although the National Board of Revenue in 2019 issued the Enforcement of Intellectual Property Rights Rules<sup>44</sup> to protect the intellectual property regime in customs, the Act itself should be amended to include provisions for intellectual property rights enforcement.
- In respect of customs related decisions and appeal, the NBR or Government is attributed with wide powers. Therefore, discretionary powers of the NBR or the Government should be eliminated in favour of a strong and exclusive administrative appeal procedures in customs related issues. The general due process standards should be followed in framing the procedure of customs decision-making that affect the individual traders.
- In compliance with the GATT Article X, the Customs Act 1969 should promote greater transparency and better-quality rules by requiring prior publications, consultations, customs rules, procedure and other generally applicable measures in the National Gazette and Statutory Regulatory Orders.<sup>45</sup>
- More importantly, the Act should provide greater flexibility to the Customs authority to define its work process by removing the hard-coded process.

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<sup>44</sup> IPR Enforcement (Import and Export) Rules, 2019.

<sup>45</sup> Mohammad A. Yusuf, 'Trade Facilitation, WTO Provisions and Bangladesh Customs' <<https://www.cbc.gov.bd/images/document/trade%20facilitation%20wto%20provisions%20and%20bangladesh%20customs.pdf>> accessed 15 April 2023.

## VI. CONCLUSION

Under the above discussion, the Government of Bangladesh should undertake more measures to bring the Customs Act 1969 completely in line, with the Revised Kyoto Convention. Predictability, transparency and due process in legal mechanism should be the basis of these changes. Discretionary powers should not result in arbitrariness. Complete digitalisation and use of information technology infrastructure would be beneficial for all. The Government through these changes would be able to earn more revenue, as well as attract more foreign trade and direct investments. For businesses, it would make the process easier resulting in reduced transaction costs and good compliance record. As a result, this will highly contribute to economic development and greater trade facilitation.

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